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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. [redacted] 188

THE MIAMI BEACH FIRST NATIONAL BANK and FRED R. BAISDEN, as Executors of the Last Will and Testament of William B. MacDonald, Jr., deceased, substituted in the place and stead of said William B. MacDonald, Jr., now deceased, and NEW AMSTERDAM CASUALTY COMPANY,

Petitioners,

vs.

INTER-CONTINENTAL PROMOTIONS, INC.,

Respondent.

REPLY BRIEF

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1526

THE MIAMI BEACH FIRST NATIONAL BANK and FRED R. BAISDEN, as Executors of the Last Will and Testament of William B. MacDonald, Jr., deceased, substituted in the place and stead of said William B. MacDonald, Jr., now deceased, and NEW AMSTERDAM CASUALTY COMPANY,

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REPLY BRIEF

The respondent is critical of the petitioners' request to the Court of Appeals that it certify under Rule 4.6 of the Florida Appellate Rules to the Supreme Court of Florida the question of the interpretation of the statutes involved after the lower court had announced its opinion of reversal. The procedure adopted by the petitioners is identical with that outlined and followed by the United States Court of Appeals, Fifth Circuit, in the case of *Edwin Green, Jr., etc. v. American Tobacco Company,*

304 F. 2d 70 (1962). There are much more cogent reasons for the certification of the action sub judice than appear in the *Green case*, supra. Petitioners pointed out in the first ground of the petition for rehearing (R. 174-193) that the lower court's opinion of reversal was largely predicated on matters not argued in the briefs in the lower court.

It is true in the case at bar that federal jurisdiction was invoked upon a diversity of citizenship. However, in the case of *United Gas Pipe Line Co. v. Ideal Cement Co., 369 U. S. 134, 82 S. Ct. 676 (1962)*, federal jurisdiction was also based upon diversity of citizenship.

The delay incidental to disposing of the petition for rehearing in the lower court, filed on November 10, 1966 (R. 174-193), denied by the lower court on *May 8, 1968* (R. 195; App. B-1), is a much longer period than would have likely been required to procure a judgment and decision from the Supreme Court of Florida upon certification under the Rule.

The decision by the lower court projects a federal constitutional question into the law suit. This was pointed out by the trial court in its opinion in which the District Judge stated:

> "In the instant case the contract between the parties called for the promotion of a prize fight. None of the parties to the contract are within the exception provided in Section 548.03 of the Florida Statutes, nor does the contract provide that the fight shall be held under the auspices of one of the exempted organizations.

Moreover, the Court is of the opinion that the provision purporting to exempt stated organizations from the operation of the statute is of doubtful constitutionality, even if applicable in the instant case, which it is not. The exemption provision would extend the privilege of presenting 'boxing exhibitions or fights' to certain citizens while denying it to others, without a reasonable basis for classification in violation of the equal protection provision of the Fourteenth Amendment of the Constitution of the United States. See Morey v. Doud, 354 U.S. 457 (1957)." (App. A-4; R. 132)

If the case is returned to the trial court under the decision of the Court of Appeals, the question of whether or not the amendatory act of 1927 to *Section 548.03, Florida Statutes* is unconstitutional because of the denial of equal protection of the law or faulty classification under the Fourteenth Amendment to the Constitution of the United States, must be faced and decided by the trial court. See, *State v. Calhoun County, 127 Fla. 304, 170 So. 883.*

We respectfully urge that this case should be certified to the Supreme Court of Florida.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief was mailed first class, postage prepaid, to Murray Sams, Jr., 7th Floor, Concord Building, Miami, Florida 33130, attorney for respondent, Inter-Continental Promotions, Inc., and Messrs. Horton & Schwartz, 308 Concord Building, Miami, Florida 33130; Hansford D. Tyler, Jr., 303 Biscayne Building, Miami, Florida 33130; David D. Phillips, 609 Biscayne Building, Miami, Florida, 33130, of counsel for respondent aforesaid, this _____ day of July, 1968.